

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

KERRY DANE OSBORNE
TX-1334585-L

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DOCKETED COMPLAINT NO.
13-077

AGREED FINAL ORDER

On the 17th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the license of Kerry Dane Osborne (the "Respondent").

In order to conclude this matter, Kerry Dane Osborne neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order (the "Order"). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Kerry Dane Osborne is a Texas state licensed real estate appraiser who holds certification number TX- 1334585-L and was licensed by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at: 5430 Parry Avenue, Dallas, Texas 75223 (the "property") on or about August 16th, 2012.
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal reports for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:
 - a) USPAP Ethics Rule -- Respondent violated the Ethics Rule because he knowingly communicated assignment results in a misleading and fraudulent manner;

- b) USPAP Record Keeping Rule -- Respondent violated the Record Keeping Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;
- c) USPAP Competency Rule – Respondent violated the Competency Rule because he did not possess the credential required to complete the assignment;
- d) USPAP Scope of Work – Respondent violated the Scope of Work Rule because he did not address the assignment condition of compliance with FHA regulations;
- e) USPAP Standards 1-2(b) & 2-2(i) – Respondent failed to identify the appraisal management company that ordered the appraisal;
- f) USPAP Standards 1-2(f) or 1-2(g), 1(c) & 2-2(x) – Respondent relied on data without verification, which implies reliance on extraordinary assumptions;
- g) USPAP Standards 1-2(e)(i) & 2-2(b)(iii); 1-1(b) – Respondent failed to identify and report significant and material information concerning the site description and improvements description adequately;
- h) USPAP Standards 1-2(e)(i) & 2-2(iii) – Respondent failed to provide an adequate description of the improvements;
- i) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to provide evidence in his appraisal report or workfile that he considered easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
- j) USPAP Standards 1-3(a) & 2-2(b)(viii); 1-1(b) – Respondent failed to provide evidence in his appraisal report or workfile that support his opinions and conclusions reported in the Neighborhood section of the appraisal report;
- k) USPAP Standards 1-3(b) & 2-2(b)(ix); 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to provide his supporting rationale for his highest and best use determination;
- l) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) ; 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop a site value determination and did not provide supporting documentation, analysis or data for his determination;
- m) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach;
- n) USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze the sales contract;

- o) USPAP Standards 1-5(b) & 2-2(b)(viii) – Respondent failed to identify or analyze sales of the subject property within three (3) years prior to the effective date of the appraisal;
 - p) USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used;
 - q) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent was careless and negligent and produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by choosing not to employ correct methods and techniques. This resulted in an appraisal report that was not credible or reliable; and
 - r) USPAP Standards 2-3 & 2-2(xi) – Respondent signed the appraisal report using the signature of another appraiser without authorization and failed to acknowledge his significant real property appraisal assistance in preparing a FHA appraisal.
6. Respondent failed to produce his complete workfile within 20 days of notice from the Board.
7. Respondent accepted and completed an FHA assignment, which he lacked the qualifications and competency to complete, and was not a FHA roster appraiser.
8. Respondent omitted material facts and made material misrepresentations as described in more detail above.
9. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(6).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(24) by failing to provide a complete workfile within 20 days of notice from the Board.
4. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(1), (a)(7), (a)(20), and (a)(22) by accepting and completing an FHA assignment, even though he was not a FHA roster appraiser, was not qualified and was not competent.
5. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(12) by misrepresenting and omitting material facts.

6. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **EDUCATION.** On or before May 17th, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**
 - a. A classroom course in Residential Market Analysis, a minimum of fifteen (15) class hours, on or before May 17th, 2014.
 - b. A classroom course in Residential Sales Comparison Approach, a minimum of fifteen (15) class hours, on or before May 17th, 2014.
 - c. A classroom course in USPAP, a minimum of fifteen (15) class hours, on or before May 17th, 2014.
2. **MENTORSHIP.** On or before May 17th, 2014. Respondent shall complete twelve (12) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. **Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.**
 - a. Twelve (12) hours of mentorship concerning the above noted violations in the findings of fact, on or before May 17th, 2014.
3. **EXPERIENCE LOG.** On or before May 17th, 2015. Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of twelve (12) months starting after the due dates for the education and mentorship (from May 17th, 2014 to May 17th, 2015). The log shall detail ***all*** real

estate appraisal activities Respondent has conducted during that twelve (12) month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request.

4. **ADMINISTRATIVE PENALTY.** On or before June 6th, 2013. Pay to the Board an administrative penalty of five thousand dollars (\$5,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before June 6th, 2013).
5. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
6. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERMS IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED, UNTIL RESPONDENT IS IN FULL COMPLIANCE WITH THE TERMS OF THIS ORDER AND THE \$1,000 ADMINISTRATIVE PENALTY HAS BEEN RECEIVED BY THE BOARD.

ANY SUCH SUSPENSION AND ADMINISTRATIVE PENALTY SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the Texas Appraiser Licensing and Certification Board. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the Board of all the necessary documents.

Respondent shall send all documents and payments necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or

(3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.


I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

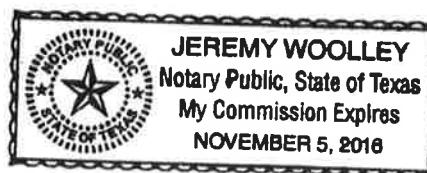
Signed this 18 day of March, 2013.


KERRY DANE OSBORNE


TED WHITMER, ATTORNEY FOR
KERRY DANE OSBORNE

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 18 day of March, 2013, by KERRY DANE OSBORNE, to certify which, witness my hand and official seal.


Notary Public Signature



Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 16th day of May, 2013.



Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May, 2013.



Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of May, 2013.



Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board